

U.S. Patent Application Serial No. 09/663,709
Submission Accompanying RCE dated December 22, 2003
Reply to OA of August 26, 2003

REMARKS

Claims 1-4, 7 and 8 are pending in this application.

Claims 1-4, 7 and 8 remain rejected under 35 U.S.C. §102(b) as being anticipated by Yokoyama et al.

In the final Office action, the Examiner notes that on page 1542 (with similar disclosure on 1544) of Yokoyama et al., the reference states that "Thermolysin, as well as the chymotrypsin or trypsin digest had not bitter taste but had a good taste characteristic of dried bonito." The Examiner inferred from this statement that the content of polypeptide of 5000 MW is less than 10% in this digest.

The Examiner has presented a basis in technical reasoning why this limitation would be inherent in the reference. However, Applicants submit that the Examiner's argument does not prove that this limitation would be inherent and that, in fact, the limitation is not inherent in the reference. Applicants here attach a Declaration under 37 CFR 1.132 by Hiroyuki FUJITA, presenting data on experiments conducted on samples corresponding to the Supernatant A of Yokoyama et al.

The experiments in the attached Declaration demonstrate that the supernatant A of Yokoyama et al. contains more than 10% by weight of polypeptide having a molecular weight of at least 5,000 and to be inferior in bitter taste and aftertaste (flavor), when evaluated according to the evaluation criteria of the present invention.

Specifically, in the mixture of Claim 1, the content of polypeptide having a molecular weight of at least 5,000 is "at most 10% by weight" while, based on the data in the Declaration under 1.132,

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the mixture described in Yokoyama et al. (supernatant A) contains 21% by weight of the polypeptide having a molecular weight of at least 5,000. Consequently, claims 1 to 4, 7 and 8 differ from Yokoyama et al.

Applicants note that the Declaration under 37 CFR 1.132 filed on February 22, 2002, in response to the first Office action was not considered to overcome the rejection over Yokoyama et al. at that time (see Office action of July 16, 2002, page 4), referring to the column chromatography and HPLC procedures in the reference. However, Applicants submit that the present invention is a mixture of oligopeptides and should be compared with supernatant A in the reference, which is a mixture of oligopeptides having angiotensin converting enzyme inhibitory active and polypeptide.

Applicants further note the effects of the present invention. The content of polypeptide having a molecular weight of at least 5,000 included in the mixture of Claim 1 of the present invention is “at most 10% by weight” and therefore “bitterness” and “flavor” are extremely excellent, while inhibitory activity and color equivalent to those of purified peptide can be obtained. Also, the excellent effects of significantly improving bitterness and flavor, by virtue of the limitation that “the content of polypeptide having molecular weight of at least 5,000 in the hydrolyzate is at most 10% by weight”, are neither disclosed nor suggested in Yokoyama et al.

That is, the limitations of claim 1 of “containing a mixture of an oligopeptide(s) ...” and “reduc[ing] the content of polypeptide having a molecular weight of at least 5000 to at most 10% by weight” are not taught or suggested by Yokoyama et al.

Reconsideration of the rejection is therefore respectfully requested in view of the newly provided data.

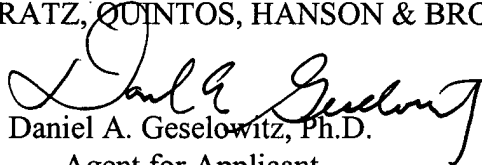
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If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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PATENT TRADEMARK OFFICE

Enclosures: Declaration under 37 CFR 1.132 by Hiroyuki FUJITA

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